

Members

Rep. Robert Kuzman, Chairperson  
Rep. John Aguilera  
Rep. Ralph Foley  
Sen. Joseph Zakas  
Sen. Connie Lawson  
Sen. Rose Antich  
James Martin  
Vincent Heiny  
Terry Harris  
Janet Ellis  
Robert Christopher  
Cynthia Boll  
Diane Bender  
MaryEllen Kiley Bishop  
John Chappell



## PROBATE CODE STUDY COMMISSION

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Authority: IC 2-5-16-2

### MEETING MINUTES<sup>1</sup>

Meeting Date: September 24, 2002  
Meeting Time: 1:00 P.M.  
Meeting Place: State House, 200 W. Washington  
St., Room 156-B  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Rep. Robert Kuzman, Chairperson; Rep. John Aguilera; Rep. Ralph Foley; Sen. Joseph Zakas; Sen. Connie Lawson; Sen. Rose Antich; James Martin; Vincent Heiny; Terry Harris; Janet Ellis; Robert Christopher; Diane Bender; MaryEllen Kiley Bishop.

**Members Absent:** Cynthia Boll; John Chappell.

Rep. Kuzman convened the meeting at 1:10 p.m. Rep. Kuzman announced that he planned to have one additional meeting for the Commission to vote on proposed legislation. The Commission scheduled the final meeting for October 22 at 1:00 p.m.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Mr. Jeff Kolb addressed the Commission on behalf of the Probate, Trust, and Real Property Section of the Indiana State Bar Association ("Probate Section"):

### **Response to the *Dellinger* decision**

Mr. Kolb addressed the Commission on an issue raised by the Indiana Court of Appeals' decision *In the Matter of the Estate of Samuel J. Dellinger Sr., Deceased v. 1st Source Bank, Personal Representative*, 771 N.E. 2d 1271, (Ind. Ct. App. 2002) ("Dellinger"). In *Dellinger*, the Court of Appeals found that signatures in a will's self-proving clause are not a substitute for the signatures on the will's attestation clause. Consequently, the court found the *Dellinger* will to be invalid because it only had a self-proving clause. Mr. Kolb stated that the Probate Section filed an amicus curiae brief with the Court of Appeals in support of 1st Source Bank's petition for rehearing. He stated that the *Dellinger* decision could affect thousands of wills in the state and that many testators are now incompetent and unable to change their wills to comply with *Dellinger*. While the ultimate result of *Dellinger* will probably be favorable, the Probate Section urges the safe approach of amending IC 29-1-5-3 to make it clear that a self-proving clause is sufficient. He provided the Commission with a draft amending the statute. (See exhibit 1) Rep. Kuzman directed the LSA Staff Attorney to prepare a preliminary draft of the amendment to IC 29-1-5-3 for the next meeting. Rep. Kuzman urged members to contact the LSA Staff Attorney with any ideas for other drafts dealing with this situation, stating that the deadline for submissions is October 10. He directed LSA to prepare drafts of the suggestions for the next Commission meeting. Mr. Kolb discussed the Probate Section's report of legislative initiatives. (See exhibit 2).

### **Publication of notice for determination of presumption of death**

Mr. Kolb first discussed an initiative to amend IC 29-2-5-1 to clarify that three notices, once each week for three consecutive weeks, are required for purposes of determining whether there is a presumption of death. Mr. Kolb pointed out that IC 29-2-5-1 requires publication in the state capitol, possibly to give notice to state agencies. After discussion, the Commission recommended that the requirement of publishing in the state capitol be removed from the statute.

### **Uniform Health Care Decisions Act**

Mr. Kolb explained that adoption of the Uniform Health Care Decisions Act was an initiative in the Probate Section's report last year to the Commission. Mr. Kolb explained that currently the language concerning health care decisions is located in Indiana's health care consent law (IC 16) and in the power of attorney provisions of IC 30. He explained that adoption of the Uniform Health Care Decisions Act would consolidate the law in one location in the Indiana Code. He reported that he has received input from a professor who recommends adding language to the Act to apply to unemancipated minors. He stated that he did not provide a copy of the Act to members because it was provided in last year's report. Rep. Kuzman directed the LSA Staff Attorney to send copies of the Uniform Health Care Decisions Act to Commission members.

### **Total Return Unitrusts**

Mr. Kolb next addressed the Commission on the proposal to add a statute concerning total return unitrusts. Mr. Kolb explained that a total return unitrust would be an alternative to allowing a trustee to adjust between principal and income. The power of the trustee to make an adjustment is the result of the enactment of the Uniform Principal and Income Act by the General Assembly the last regular session. The proposed unitrust

statute would allow an income trust to convert to a total return unitrust. After the conversion three to five percent of the value of the trust as determined at one point in time would be allocated to the income beneficiary. Ms. Kerry Spradlin, Indiana Banker's Association (IBA) stated that last year the IBA decided not to support amending the law to allow for a total return unitrust. She stated that the IBA would like to present its comments on this issue to the Commission. She stated that she will present the unitrust draft to the IBA Committee for their review.

### **Rule Against Perpetuities and Dynasty Trusts**

Mr. Kolb addressed the Commission on amending the language of the rule against perpetuities (IC 32-8-17-3; IC 32-8-17-4) to allow for the creation of a perpetual or dynasty trust. He explained that the Probate Code Study Commission approved this legislation last year, but at some point during the last regular session it was removed from the probate bill. He stated that because Indiana does not permit perpetual trusts, people remove their assets from Indiana and go to other states such as Alaska and Delaware to have these trusts drafted. The Commission voted unanimously to recommend that the language of the draft approved last year by the Commission be prepared as a bill for introduction in the 2003 session.

### **Rules for the Interpretation of Trusts**

Mr. Kolb discussed amending the Indiana Code to provide rules for the interpretation of trusts. Mr. Kolb stated that the Probate Section recommended the same language last year, and the Probate Code Study Commission approved it, but the language was removed from the probate bill at some point during the last regular session. The Commission voted unanimously to recommend that the language of the draft approved last year by the Commission be prepared as a bill for introduction in the 2003 session.

### **Uniform Disclaimer of Property Interests Act**

Mr. Kolb addressed the Commission on the proposal to adopt the Uniform Disclaimer of Property Interests Act. Mr. Kolb explained that under existing law a disclaimer must be made within nine months, while under the Uniform Act there is no time limit on disclaimers. Furthermore, the Uniform Disclaimer of Property Interests Act expands the types of property interests can be disclaimed and who can disclaim them. Rep. Kuzman asked whether any other states have adopted the Uniform Act. Mr. Kolb stated that he would find out this information and provide a summary to the Commission members and the Indiana Banker's Association.

### **Uniform Custodial Trust Act**

Mr. Kolb addressed the initiative to adopt the Uniform Custodial Trust Act. He explained that the Uniform Custodial Trust Act is basically the same as the Uniform Transfers to Minors Act, except that the beneficiary of a custodial trust is an adult. He explained that the Act prescribes a simplified form of trust that is suitable to manage the property of individuals who are not wealthy. Rep. Kuzman commented that some legislators would object to the fact that there is no threshold amount or value for a trust created under the Uniform Custodial Trust Act.

### **Uniform Trust Code**

Mr. Kolb addressed the Commission on an issue that was examined by the Commission last year, the Uniform Trust Code. Mr. Kolb stated that the Probate Section concluded that the Uniform Trust Code was too massive to review as a single draft. He stated that the Probate Section broke the Act down into eleven sections and assigned the sections to Committee members to review, compare to existing law, and determine if there are provisions in existing law that need to be retained or amended. He stated that the Probate Section has serious reservations about adopting the Uniform Trust Code at this time, and will report back to the Commission next year after further review and study. Sen. Zakas asked whether any state has adopted the Uniform Trust Code. Mr. Kolb stated that Kansas may have recently adopted it.

Rep. Kuzman directed the LSA Staff Attorney to prepare preliminary drafts of the initiatives contained in the Probate Section's report, in addition to the drafts prepared in response to the *Dellinger* case. He directed LSA to send the drafts to Commission members by October 15 so they could review the drafts before the October 22 meeting of the Commission. Rep. Kuzman adjourned the meeting at 3:25 p.m.